

Janelle M. Rensberger appeals the trial court's custody order and its subsequent denial of her motion to correct error. Rensberger presents two issues on appeal that we restate as:

- I. Whether the trial court abused its discretion by rescinding its earlier order directing the parties to undergo psychosexual and psychological examinations;
- II. Whether the trial court's findings of fact and conclusions -- that the best interests of M.J.K. are to place her in the primary custody of her father - were supported by the evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

Rensberger gave birth to M.J.K. on September 30, 2003. On January 26, 2004, Rensberger filed a petition to establish paternity naming Joseph C. Karnes as the father. Genetic testing established that Karnes was M.J.K.'s biological father. Thereafter, the trial court ordered that Karnes have supervised visitation with M.J.K., appointed a Guardian ad Litem ("GAL") to represent M.J.K, and set the matter for evidentiary hearing.

Over the course of the next year the parties accused each other of being unfit to have custody and unsupervised visitation. Rensberger claimed that Karnes was physically, emotionally, and sexually abusive; manipulative; mentally unstable; and an alcoholic. Karnes alleged Rensberger was mentally unstable and only concerned with child support payments. The GAL initiated its investigation, in an effort to verify the parties' allegations and to evaluate the best interests of M.J.K. Thereafter, at the GAL's request, the trial court ordered Rensberger to submit to a psychological exam and Karnes to submit to a psychosexual exam. Neither party complied with the court's order. The trial court tried to initiate compliance by naming a panel of psychologists from which the parties were to

choose. Again, neither party completed the evaluations and the only step taken by either party was by Rensberger, who, nearly two months after the Court named the panel, gave notice to Karnes's counsel that two of the panelists were inappropriate because they only evaluate children. Eight months after the trial court's order for the examinations, and twenty-two months after the paternity action commencement, the trial court held an evidentiary hearing to determine custody, child support, and visitation.

At the inception of the hearing, Rensberger, *pro se*, renewed her motion to continue the proceeding to secure counsel and to postpone the proceedings until after the examinations were completed. The trial court refused, noting that Rensberger had two separate attorneys already in this action, that the matter had been pending for nearly two years, that neither party was making any efforts to comply with its order, and, as a result, a continuance was now no longer in the best interests of M.J.K. The trial court also rescinded its previous order requiring the examinations. After the evidentiary hearing, the court entered findings of fact and conclusions and entered its order granting Karnes physical custody of M.J.K. Thereafter, Rensberger moved to correct error, which was denied. Rensberger now appeals. Additional facts will be supplied as necessary.

DISCUSSION AND DECISION

I. Trial Court's Rescission of Its Previous Order

Rensberger first contends that it was legally invalid for the trial court to ignore its own order requiring the parties to submit to psychological and psychosexual examinations. Specifically, Rensberger asserts that one of the factors a trial court must consider in determining the best interests of the child is the mental and physical health of all individuals

involved and that the trial court is permitted to seek and obtain expert opinion on the matter. IC 31-14-13-2(6); IC 31-17-2-10. Rensberger argues that the trial court, having noted the need for medical evaluations, was not permitted to rescind the order.

We first acknowledge “our well-settled rule that a trial court has inherent power to reconsider, vacate or modify any previous order so long as the case has not proceeded to final judgment; that is to say the case is still *in fieri*.” *Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998). Once a trial court acquires jurisdiction, it maintains that jurisdiction until the entry of final judgment. *Id.* “Child custody determinations fall squarely within the discretion of the trial court and will not be disturbed except for an abuse of discretion.” *Nunn v. Nunn*, 791 N.E.2d 779, 782 (Ind. Ct. App. 2003) (citing *Klotz v. Klotz*, 747 N.E.2d 1187, 1189 (Ind. Ct. App. 2001)). Within that discretion, a trial court may “seek the advice of professional personnel . . .” IC 31-17-2-10. However, the rule is not mandatory because in custody disputes the ultimate trier of fact, who must weigh the evidence and assess the credibility of the witnesses, is the trial court. *Periquet-Febres v. Febres*, 659 N.E.2d 602, 605 (Ind. Ct. App. 1995).

Here, the trial court, in considering the best interests of the child, chose to proceed and resolve the issue of custody rather than prolonging the matter. The trial court explained that it denied Rensberger’s motion to continue and rescinded its previous order because she had four months to obtain her third attorney. *Tr.* at 10. Further, it had been eight months since the trial court ordered the examinations. Neither party had yet complied. Rensberger did strike two out of the three psychologists from the panel provided by the trial court but never submitted to an examination with the third. Additionally, the trial court stated that it did not

believe either party had the financial resources available to complete the examinations. *Tr.* at 29. The trial court concluded that it was time for the parties to present their evidence so that it could make a determination. All of the trial court's acts were legally valid and within its discretion.

II. Custody of M.J.K.

Rensberger also claims that the trial court's findings of fact and conclusions are not supported by the evidence. Because the record is bereft of any psychological or psychosexual examinations, and the trial court based its judgment on clinical observations comparing the mental health of the parties, Rensberger asserts that the evidence does not support the trial court's determination.

In reviewing the judgment of the trial court we must determine whether the evidence supports the findings and whether the findings support the judgment. *Nunn*, 791 N.E.2d at 782 (citing *Klotz*, 747 N.E.2d at 1189). In family matters, we extend considerable deference to the trial court because it is in a better position than we are to judge the facts and assess the various relationships of the parties. *Shelton v. Shelton*, 835 N.E.2d 513, 516 (Ind. Ct. App. 2005). Custody determinations are therefore reviewed for an abuse of discretion. *In re Paternity of Z.T.H.*, 839 N.E.2d 246, 253 (Ind. Ct. App. 2005). We set aside judgments only when they are clearly erroneous, and will not substitute our own judgment if any evidence or legitimate inferences support the trial court's judgment. *Id.* at 253. "A finding or conclusion is clearly erroneous when a review of the evidence leaves us with a firm conviction that a mistake has been made." *Id.* at 249.

Here, the trial court entered findings of fact stating that: "the issue of custody had

been pending for twenty-three (23) months;” both parents’ pasts have been fraught with family problems stemming individually from Karnes’s alcohol abuse and Rensberger’s previous divorce; Karnes was a recovering alcoholic for the past three years and there was no evidence to contradict that he was sober; Rensberger refused to stipulate to any parenting time for Karnes unless it was supervised; and Karnes’s daughters made allegations that his drinking led to inappropriate discipline and conduct and that one of the daughters “reported verbal abuse and that [Karnes] was ‘over top of me’ while she laid in bed.” *Appellant’s App.* at 1. Contemporaneously, the trial court, pursuant to IC 31-14-13-2, entered its conclusions and held in relevant part that: “mother’s job problems are directly tied to her mental health issues;” “[m]oney is a motivating factor for mother;” father is currently mentally stable while “[m]other, from what the court has observed, lacks mental stability and long term mental health;” “[t]he court finds no substantive evidence exists that neither [sic] elder daughter of Mr. Karnes was sexually molested by him;” Rensberger has failed to adequately address M.J.K.’s hearing problems; Karnes has gone beyond committing himself as a parent; Karnes must face his sobriety daily and the court would not hesitate to reconsider its order if alcohol returns to his life; based on the testimony of the GAL, Rensberger’s delay in providing M.J.K.’s social security number to Karnes so he could establish M.J.K.’s medical insurance “indicates her complete lack of clear thinking and logic;” and, “this court therefore concludes and orders that the best interests of [M.J.K.] can be met by her being placed in the primary custody of her father.” *Id.* at 1-2.

A review of the record, developed from an evidentiary hearing spanning six separate days, reveals that the trial court had adequate grounds to make its findings of fact and its

conclusions. *See In re Paternity of A.M.C.*, 758 N.E.2d 536, 539 (Ind. Ct. App. 2001). The GAL recommended that the best interests of M.J.K. were to place her in the custody of Karnes. The evidence supported the trial court's conclusions that Rensberger may be mentally unfit, at times exhibited "a lack of clear thinking and logic," and is still struggling to deal with her divorce. Similarly, it supports the trial court's conclusion that Karnes is currently stable and that the best interests of M.J.K. are to be placed in the custody of Karnes. *Appellant's App.* at 2. Based on these conclusions, the trial court did not abuse its discretion in granting parental custody of M.J.K. to Karnes.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.